

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BUCKHORN INC., and)	
SCHOELLER ARCA SYSTEMS, INC.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 3:08-cv-00459
)	
ORBIS CORPORATION,)	DEMAND FOR JURY TRIAL
ORBIS MATERIAL HANDLING, INC., and)	
DOES 1 through 6,)	
)	
Defendants.)	

AMENDED COMPLAINT

Demand for Jury Trial

The Plaintiffs, Buckhorn Inc. and Schoeller Arca Systems, Inc., demand a trial by jury and for their Complaint allege as follows.

Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter of this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338(a) for patent infringement under 35 U.S.C. §§ 271 and 281 for remedies available under 35 U.S.C. §§ 283, 284, and 285.

2. Venue is proper under 28 U.S.C. §§ 1391(b) and (c), 1392, and 1400(b), and Local Rule 82.1(d).

Parties

3. The Plaintiff, Buckhorn Inc. (“Buckhorn”), is a corporation organized under the laws of the State of Ohio with its principal place of business at 55 West Techne Center Drive, Milford, Ohio 45150. Buckhorn Inc. was formerly known as Buckhorn Material Handling Group Inc.

4. The Plaintiff, Schoeller Arca Systems, Inc. (“Schoeller”), is a corporation organized under the laws of the State of Delaware with its principal place of business at 5202 Old Orchard Road, Suite 110, Skokie, Illinois 60077. Schoeller is the owner of U.S. Patent Number 5,199,592.

5. The Defendant, Orbis Corporation (“Orbis”), is a corporation organized under the laws of the State of Wisconsin with its principal place of business at 1055 Corporate Center Drive, P.O. Box 389, Oconomowoc, Wisconsin 53066. Orbis has registration number 112,689 to do business in Ohio and a resident agent in Ohio at CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114. Orbis maintains and operates facilities located in Urbana, Mentor, and Chillicothe, Ohio.

6. The Defendant, Orbis Material Handling, Inc. (“Orbis/LinPac”), is a corporation organized under the laws of the State of Kentucky with its principal place of business at 1645 Bergstrom Road, Neenah, Wisconsin 54956. Orbis Material Handling, Inc., was formerly known as LinPac Materials Handling Inc. Orbis/LinPac has offices at 120 Commerce Court, Georgetown, Kentucky 40324 and a resident agent at CT Corporation System, Kentucky Home Life Building, Louisville, Kentucky 40202. Orbis Corporation acquired LinPac Material Handling Inc. on or about December 11, 2006.

7. The Defendants Does 1 through 3 are business entities which, upon information and belief, reside and/or conduct business within this Judicial District. Moreover, Does 1 through 3 are, upon information and belief, directly engaging in the sale of infringing products as alleged herein as partners, business associates, collaborators, or suppliers to one or more of the named Defendants. The Plaintiffs are presently unaware of the true names of Does 1 through 3. The Plaintiffs will amend this Complaint upon discovery of the identities of such Defendants.

8. The Defendants Does 4 through 6 are, upon information and belief, individuals who reside and/or conduct business within this Judicial District. Further, Does 4 through 6 are directly and personally contributing to, inducing, and engaging in the sale of infringing products as alleged herein as partners, business associates, collaborators, or suppliers to one or more of the named Defendants. The Plaintiffs are presently unaware of the true names of Does 4 through 6. The Plaintiffs will amend this Complaint upon discovery of the identities of such Defendants.

Background

9. U.S. Patent Number 5,199,592 was legally issued on April 6, 1993, for an invention entitled "Container With Latchable Hinged Sidewall Gate." A copy of U.S. Patent Number 5,199,592 ("the '592 patent") is attached as Exhibit 1.

10. The '592 patent is now assigned to Schoeller. Schoeller licensed the '592 patent to Myers Industries, Inc. ("Myers"). Myers is a corporation organized and existing under the laws of the State of Ohio with its principal place of business located at 1293 South Main Street, Akron, Ohio 44301. The license permits Myers, alone or through a subsidiary, to assert the '592 patent and collect damages for infringement.

11. Buckhorn is a wholly-owned subsidiary of Myers, the beneficiary of the license of the '592 patent, and the corporate entity authorized by Myers and Schoeller to assert an action of infringement of the '592 patent. As such, Buckhorn has a full right to bring this litigation and collect damages in its name.

12. The Plaintiff Buckhorn is engaged in the business of manufacturing and selling reusable packaging products, such as containers, and programs for industrial manufacture, processing, and other commercial operations.

13. The Defendants, Orbis and Orbis/LinPac, manufacture and sell reusable plastic containers for use in industrial material handling including automotive components, bearings, hardware, industrial equipment, metal parts, plastics and rubber, resins and powders, and tools. Certain of the containers infringe the '592 patent and were made and/or sold by Orbis and Orbis/LinPac in this judicial district and elsewhere. Further, Orbis has a regular and established place of business in this judicial district. Orbis/LinPac is owned by Orbis and makes or sells infringing containers through Orbis' place of business in this judicial district.

14. Buckhorn, through a letter from its counsel of July 17, 2008, notified Orbis of Buckhorn's rights under the '592 patent and Buckhorn's concerns that one or more of Orbis' collapsible containers may infringe the '592 patent. Buckhorn's counsel received a response from an associate general counsel for Menasha Corporation. Menasha Corporation is a corporation organized under the laws of the State of Wisconsin and has a principal place of business located at 1645 Bergstrom Road, P.O. Box 367, Neenah, Wisconsin 54957. Upon information and belief, Menasha Corporation is the corporate Defendant Doe 1.

15. Buckhorn, through a letter from its counsel of October 14, 2008, provided a detailed identification of the Orbis containers understood by Buckhorn to infringe the '592 patent.

16. Outside counsel for Orbis provided a letter of December 5, 2008, denying infringement. The progress of negotiations between Buckhorn and Orbis is at a stalemate.

COUNT 1
Infringement of U.S. Patent Number 5,199,592

17. Paragraphs 1 through 16 are adopted and incorporated herein by reference.

18. The Defendants, including at least Orbis Corporation and/or Orbis Material Handling, Inc., have infringed and continue to infringe the '592 patent by making, using, offering for sale, selling, and/or importing reusable containers with a latchable hinged sidewall gate as claimed in the '592 patent. This infringement of the '592 patent is literal infringement and/or infringement under the doctrine of equivalents. The Defendants' activities are being conducted in the United States and within the Southern District of Ohio without license of the '592 patent.

19. At least the Defendants Orbis and/or Orbis LinPac are also inducing others within this district and elsewhere to infringe the '592 patent by making, using, offering for sale, selling, and/or importing reusable containers with a latchable hinged sidewall gate as claimed in the '592 patent.

20. On information and belief, the infringement by at least the Defendant Orbis has occurred with its full knowledge of the '592 patent and has been willful and deliberate, thereby making this case exceptional within the meaning of the U.S. patent laws. Absent injunctive relief pursuant to 35 U.S.C. § 283, the infringement will continue.

21. The Plaintiffs have been damaged and are continuing to be damaged by the infringement of at least the Defendants Orbis and Orbis/LinPac of the '592 patent and will be irreparably harmed unless the infringement is enjoined by this Court.

PRAYER FOR RELIEF

The Plaintiffs Buckhorn and Schoeller seeks judgment as follows:

(A) Preliminarily, during the pendency of this action, and permanently after final hearing, that this Court enjoin the Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with the Defendants from making, using, offering for sale, and/or selling in any way products infringing U.S. Patent Number 5,199,592;

(B) That this Court order the Defendants to sequester, forfeit, and deliver for destruction all infringing materials in their possession or control or in the possession or control of the Defendants' agents or associates;

(C) That this Court order an accounting of the damages sustained by the Plaintiffs, including but not limited to the Plaintiffs' lost profits, and that such damages be trebled in accordance with 28 U.S.C. § 284;

(D) That this Court award an assessment against the Defendants of costs and attorney fees incurred by the Plaintiffs in this action;

(E) That this Court grant the Plaintiffs such other and further relief as the Court may deem just and proper.

Counsel for the Plaintiffs submit this complaint to the Court.

Respectfully submitted,

18 September 2009

Date

/s/ Paul Grandinetti

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CERTIFICATE OF SERVICE

I certify that on September 18, 2009, I electronically filed the foregoing AMENDED COMPLAINT with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel for the Defendants:

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I further certify that a copy of the foregoing was sent September 18, 2009, via first class mail, postage prepaid, to the following non-CM/ECF counsel for the Defendants:

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